



**Hong Kong Retail Management Association**  
**Submission to LegCo's Bills Committee on Competition Bill**

**20 July 2011**

The retail industry contributes significantly to Hong Kong's GDP and employs over 240,000 people whose success hinges upon delivering high quality products and services at reasonable prices to our customers. The intent to regulate conduct causing adverse effect on consumers is understandable; however, unclear legislation or guidelines would ultimately cause serious damages to the business sector and whole community.

Representing diverse groups of retailers for the past 28 years and with members employing over half of the total workforce in Hong Kong, the Hong Kong Retail Management Association (HKRMA) would like to set out our views on the Guidelines on the Competition Bill as follows:

**1. More Time for More Thorough Discussion on the Guidelines**

While we appreciate the Government's effort to publish the Guidelines, giving 1 ½ weeks for our members to review is not enough. We have to consult expert opinion and our members have to extrapolate the examples in the Guidelines to relevant behaviours for our industry. These take time if the Government wants a well-informed consultation on the Guidelines.

**2. Market Definition - Hypothetical Monopolist Test**

In our previous submissions, HKRMA has reiterated about the need for clarity. This is especially true in how the Administration will define the market. The Hypothetical Monopolist Test is of great concern as:



- a) it is self contradictory in saying that a market participant is as once a “hypothetical monopolist” and at the same time a “competitor”;
- b) business of any size could be a “hypothetical monopolist” if it sells a product or products that are considered a “market” in of itself; and
- c) no indication of what combination of factors or which factors weigh more heavily in the determination of market power.

In a market as small as Hong Kong, the range of substitutable products and hence the market will vary tremendously from one period of time to another as consumer tastes change. Furthermore, the Guidelines require businesses to provide information about competitors and potential competitors as well as production capacity.

As a free market, Hong Kong has parallel imports as well as importing most of its products. Production information and supply information for retailers are not complete and not easily obtainable. Hence, businesses will have to use resources to gather information for the Commission to defend “hypothetical” and “theoretical” allegations.

### **3. May or May Not?**

The HKRMA welcomes a set of Guidelines. Unfortunately, the Guidelines do little to clarify which conducts breach the rules or not. Many of the Guidelines’ examples include qualifiers “may”, “may not be”, “would not normally”, “may be presumed”, “may have appreciable effect”, “potential”, etc. All of which are imprecise concepts that makes it unreasonable for business to make such assessments especially if authorities are looking at behaviours after the fact, *ex post facto*.

### **4. Conclusion**

These are among the many conflicting statements within the Guidelines that actually create more questions than answers. Going forward, the Government and Bills Committee at LegCo should take more time to consult different businesses and



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associations so that a set of meaningful Guidelines can be developed which could be followed on a practical level. The HKRMA and its members would like to follow the law, but such Guidelines are insufficient and will only serve to confuse even further.

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